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No. 87-225

In The

Supreme Court of the United States

October Term, 1987

E. K. WILCOX, JR.,

Petitioner,

v.

J. PAUL FORD, WARDEN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION FOR THE RESPONDENT

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QUESTIONS PRESENTED

1.

Whether this Court should abandon its role as a Court of law and grant a writ of certiorari to review evidence, discuss specific facts and seek to correct errors of fact finding?

2.

Whether this Court should grant certiorari to review an asserted conflict in principle between the circuit court below and other federal circuit and state courts, which alleged conflict is merely illusory?

3.

Whether this Court should abandon its role as a Court of law and grant certiorari to review the decision of a circuit court merely for correctness?

TABLE OF CONTENTS

Page(s)

QUESTIONS PRESENTED i

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 2

REASONS FOR NOT GRANTING THE WRIT 15

I. PETITIONER'S ASSERTION OF A CONFLICT BETWEEN THE CIRCUITS, AND SOME STATE COURTS, IS GROUNDED ON PETITIONER'S REPRESENTATION TO THIS COURT THAT THE IN-COURT TESTIMONY OF ONE WITNESS AND AN OUT-OF-COURT STATEMENT OF A SECOND WITNESS USED SOLELY FOR IMPEACHMENT WERE COERCED; HOWEVER, BECAUSE THE DISTRICT COURT AND THE CIRCUIT COURT BOTH FOUND THIS PIVOTAL CONTENTION OF "COERCION" TO BE "MERITLESS," AND BECAUSE THIS COURT IS NOT A COURT FOR THE MERE CORRECTION OF ERRORS IN FACT FINDING, THIS APPLICATION FOR CERTIORARI SHOULD BE DENIED. 15

II. PETITIONER'S ASSERTION OF A CONFLICT IN PRINCIPLE BETWEEN THE CIRCUIT COURT BELOW AND OTHER FEDERAL CIRCUIT AND STATE COURTS IS MERELY ILLUSORY. 18

III. PETITIONER'S MERE DISAGREEMENT WITH THE CIRCUIT COURT'S RESOLUTION OF THE POLICE INVESTIGATIVE MISCONDUCT ISSUE AND THE SUFFICIENCY OF THE EVIDENCE CLAIM PRESENTS NO QUESTION FOR REVIEW ON CERTIORARI. 20

CONCLUSION 21

TABLE OF AUTHORITIES

Page(s)

CASES CITED:

Graver MFG. Co. v. Linde Co., 336 U.S. 271 (1949) ..17, 20
Jackson v. Denno, 378 U.S. 368 (1964) 19
United States v. Johnson, 268 U.S. 20 (1925) 17, 20
Wilcox v. Ford, 626 F.Supp. 760 (M.D. Ga. 1985) 16
Wilcox v. Ford, 813 F.2d 1140 (11th Cir. 1987) 16
Wilcox v. State, 250 Ga. 745, 301 S.E.2d 251 (1983) 1

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BRIEF IN OPPOSITION FOR THE RESPONDENT

PART ONE

STATEMENT OF THE CASE

Petitioner was indicted by the grand jury of Lowndes County, Georgia during the March Term, 1981 for the murder of Hellen Hanks and the unlawful concealment of the death of Hellen Hanks. On January 14, 1982, following a trial by jury, Petitioner was found guilty of both offenses and was sentenced to life imprisonment for murder and to a consecutive twelve month sentence for concealing the death of another.

Petitioner's convictions and sentences were affirmed on direct appeal to the Georgia Supreme Court in *Wilcox v. State,* 250 Ga. 745, 301 S.E.2d 251 (1983).

Following the denial of relief on direct appeal, Petitioner filed a petition for writ of habeas corpus in the Superior Court of Muscogee County, Georgia. After conducting an evidentiary hearing on November 17, 1983, the state habeas corpus court, on March 9, 1984, entered its Order denying state habeas corpus relief. On April 25, 1984, the Georgia Supreme Court denied Petitioner's application for a certificate of probable cause to appeal.

On September 17, 1984, Petitioner filed an application for a writ of habeas corpus in the federal district court for the Middle District of Georgia, Macon Division. After conducting an evidentiary hearing, the federal district court granted habeas corpus relief on December 20, 1985. A timely appeal was filed by the Respondent warden to the Eleventh Circuit Court of Appeals. Petitioner filed a timely cross-appeal.

After briefing and oral argument, the Eleventh Circuit Court of Appeals reversed the district court's grant of habeas corpus relief on April 3, 1987. Petitioner's petition for rehearing was denied by the circuit court on May 11, 1987. Petitioner's application for a writ of certiorari was filed in this Court on August 11, 1987.

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PART TWO

STATEMENT OF FACTS

The following facts are those ascertained, verbatim, by the Supreme Court of Georgia.

"On August 31, 1972, a Thursday, the victim, thirty-five year old Hellen Hanks, disappeared. At that time, she was working as a bookkeeper and secretary for Wilcox Outdoor Advertising in Valdosta, a company owned by the appellant, E.K. Wilcox, Jr. and his father, E.K. Wilcox, Sr. Her body was discovered approximately eight years later, on November 24, 1980, by a logger clearing a wooded area.

On August 31, 1972, Hellen went to work as usual. She was wearing a dark green dress with a long strand of green beads. After work, she planned to have her hairpiece combed and her typewriter repaired. Jerry Davis, an employee of Wilcox Outdoor Advertising, testified that he saw her in the office at about 8:15 before he left on an assignment.

At about 5:00 p.m. that afternoon, James Hanks, the victim's husband, received a telephone call from the appellant. Hanks testified that the appellant told him that Hellen could not be found around the office, although her car was still there. Mr. Hanks then immediately drove to the Wilcox Outdoor Advertising office arriving there at about 5:20 p.m. or 5:25 p.m. He testified that when he arrived, the appellant was going through Hellen's purse. He asked the appellant what he was doing and he responded he was looking for some keys that Hellen would 'not be needing . . . and longer.'

At approximately 5:30 p.m. the Valdosta police and GBI agents, responding to the appellant's call, arrived at the Wilcox business. They unsuccessfully searched the office and warehouse for Hellen, but they did find her typewriter and hairpiece in the car and two completed

applications for employment in her purse. Since they found no evidence indicating where Hellen might be, a missing person's report was filed.

The Valdosta police continued their investigation of Hellen's disappearance for several days before discontinuing it because neither Hellen nor any new evidence was found. Similarly, though the GBI investigation lasted longer, it was discontinued for lack of evidence.

On November 24, 1980, Fred Blanton, a logger, was digging up roots with a plow while clearing a wooded area off Indian Creek Road when he unearthed a wooden box. The plow ripped off the top of the box, which had been nailed shut, exposing a skeleton. Mr. Blanton called the police to the scene. In addition to the skeleton, the following items were found in or around the box: a metal cash box, a second metal box, a bank bag, receipt books, a padlock with a key inserted, several other keys, portions of a dress, a wedding ring, lingerie, shoes, a mass of hair, and a length of rope. The dress, the padlock, and the other keys were found under the burial box, and the lingerie was found rolled up in a ball next to it.

Because papers found referred to Wilcox Outdoor Advertising, an officer called the appellant to inquire if he was missing certain items. As a result of the call, but not at the request of the officer, the appellant came to the scene.

The burial box, the skeletal remains, and other items found at the scene were collected and examined. Dr. James Howard of the State Crime Laboratory examined the rope and testified that hairs, consistent with hairs taken from the mass of hair found in the box, were em-

bedded in the surface of the rope, a condition, he testified, that would not exist as a result of casual contact. He testified that the combination of the condition of the hair and its adherence to the rope was consistent with it having been embedded in the rope while the victim was alive. He testified that the curl or loop in the rope was consistent with it having been crossed or tied and left that way for a long period of time. Although witnesses testified that the rope found in the grave was similar to rope used at Wilcox Outdoor Advertising, Dr. Howard testified that he had compared rope samples taken from the Wilcox business in 1980 to the rope found in the grave and they did not mateh. He attributed the difference to the use of different rope fibers in 1972.

Several witnesses testified that the burial box was similar to boxes used by Wilcox Outdoor Advertising, and the appellant, while at the burial site, told several officers the box used to bury Mrs. Hanks looked like one that had been reported missing from the business in 1972. These boxes are approximately four feet long, two to three feet wide, and two to three feet deep and are made of wood, except for the top which is metal. In 1972 two trucks used at Wilcox Outdoor Advertising were fitted with these boxes to carry equipment. A third box of this type was kept in the back of the warehouse. Willard King, the Appellant's father-in-law, and now production manager of the Wilcox business, worked part-time on Saturdays in 1972. He testified that he found this extra box was missing on the second Saturday, or nine days after Hellen's disappearance. He had not worked the previous Saturday. He stated that he told the appellant the box was missing, and

that the appellant said he would report it to the police, since Mrs. Hanks was also missing.

Other items found at the scene were also connected to the appellant's business. One of the keys fit a 1971 Ford pick-up truck, which was being driven by the appellant in 1972. There was testimony that there were two keys for this truck, one kept by the appellant, and one kept by Hellen Hanks while she was the secretary. In 1979, this truck was purchased from the appellant by Salem Scott, who testified the appellant gave him only one ignition key.

The cash box and the rusted padlock with the key in it were linked with the Wilcox business. To service its vehicles, the company had a gas pump located behind the building. The switch for this pump was located inside the office and was secured with a padlock. There was testimony that Hellen Hanks kept the key to this padlock in the cash box in her office. If employees wished to use the pump, they had to get the key from Hellen. The key found in the padlock opened it, and a key taken from the appellant's cash drawer one week after the burial site was uncovered also fit the rusted padlock.

Many of the personal belongings found at the burial site, such as the dress, the wedding ring, and the beads, were identified by Hellen's family as belonging to her. Both the dress and the bra showed signs of being torn or cut.

Medical studies and comparisons were conducted on the skull and other skeletal remains. Dr. Robert Johnson, a dentist, compared the skull to Hellen's dental records, and established the skull to be Hellen's. Dr. Larry How-

ard of the Georgia State Crime Lab conducted two examinations of the skeletal remains, one shortly after the bones were found, and another in August of 1981.

Dr. Howard concluded the first examination of the skeletal remains about March 10, 1981. He testified that he was not able to establish the cause of death, but that, nevertheless, he was of the opinion that she was strangled. He based this opinion on his knowledge of the conditions of the burial site and on other items found at the burial site, particularly the rope, which was found tangled in hair and lying in the chest or neck area of the skeleton, and which, he testified, had the approximate diameter of a neck when allowed to assume its own shape.

After statements taken from two employees of Wilcox Outdoor Advertising in July of 1981 indicated that the body may have been dismembered before burial, the remains were exhumed, and a second examination was performed. It revealed evidence of dismemberment of the left knee joint. Dr. Howard testified that after cleaning the knee joints, he found two linear or vertical, as opposed to horizontal, abrasions on the back of the left knee cap. He testified the abrasions were made by a pointed instrument, and that brown bodily fluid stains on the knee cap and the lack of abrasions in the dirt covering the knee cap indicated that the dismemberment occurred prior to the first burial. He also found a possible associated lesion or slice mark on the bottom of the large thigh bone (the femur) of the left leg, located on the same side of the leg as the abrasions on the knee cap.

The left knee cap and the femur were also examined by Dr. Ellis Kerley, a leading forensic pathologist from

the University of Maryland. He agreed that there were two incised marks on the back of the left knee cap and one on the femur. Though he could not be positive of dismemberment in this case, he found these cut marks to be consistent with dismemberment shortly after death.

Contrary testimony was offered by Dr. Joseph Burton. He testified that the bone exposed by the cut marks on the knee cap and femur was not mineralized or oxidized, as was other unmarked bone, indicating that these marks were a recent injury to these bones. He did not think that these marks were consistent with dismemberment of the leg.

After the discovery of the remains of Hellen Hanks, an investigation of her murder began. The police interrogated two employees of Wilcox Outdoor Advertising, Lorenzo Marshall and Ed Wrentz, who gave statements incriminating the appellant.

Lorenzo Marshall, who started work for the Wilcox business in 1952, gave a signed written statement on July 2, 1981, which was witnessed by Ed Wrentz. He stated that he did not remember the date, but that shortly after Mrs. Hanks disappeared, Ed Wrentz came to him and asked him to help him dig a hole. He stated that the appellant then drove them in his truck somewhere, where they dug until they had to stop because of rain, at which time the hole was about waist deep. He stated that he did not remember when, but that he and Ed Wrentz later met the appellant and his father at Wilcox Outdoor Advertising, at which time the appellant had them load a box on his truck and drove them to the hole where he and Ed finished digging and buried the box. He also stated that

Ed threw something that looked like a dress into the hole before the box was lowered.

At trial, Marshall recanted his testimony, maintaining that he was in Albany, Georgia from Tuesday until Friday, September 1, 1972, and that he had nothing to do with the burial. Two other witnesses, both employees of Wilcox Outdoor Advertising, testified to this effect. Both testified that they were in Albany working with Marshall during the week of Hellen's disappearance, and that they did not arrive in Valdosta until that Friday afternoon. Marshall testified that he told the officers from the very beginning he didn't know anything about a burial. He testified that the officers put words in his mouth by telling him what Ed had said. He testified that since he was scared and wanted to go home, he went along with the story.

Ed Wrentz, who was 78 at the time of trial and who had worked for the Wilcox business for more than 30 years, gave a signed statement on July 1, 1981 incriminating the appellant. Unlike Marshall, he recounted basically the same story on direct examination at trial. He testified that shortly after Mrs. Hanks disappeared, he and Lorenzo Marshall were driven into the country by the appellant to dig a hole, but that they did not finish because of rain. He testified that he didn't remember the date, but that it was dark, though it hadn't been dark long. He testified that at a later date, he and Lorenzo met the appellant and his father at the warehouse, at which time he and Lorenzo put Mrs. Hanks' body into a box and loaded it onto a truck. He testified that the body was stiff and that extra pieces, which he thought were part of her legs, were also put in the box. He testified that they then drove

to the hole, at which time he and Lorenzo finished digging the hole and placed the box, along with a few other things, into it.

After testifying to the above story on direct, Wrentz repudiated it on cross. He stated that the first time he talked to the police, he told them he didn't know anything about Mrs. Hanks' disappearance. He testified he told the truth on that occasion and that that was the truth now, i.e., at the time of trial. He testified on cross that he was out-of-town Thursday, August 31, 1972 and Friday, September 1, 1972, but arrived back in Valdosta that Saturday. This testimony contradicted the statement he gave to police, which was that he and Lorenzo helped dig a hole the night of Hellen's disappearance. Mr. Wrentz, however, did testify on cross that he did get a box from the warehouse and that he did dig a hole.

On redirect, Mr. Wrentz reiterated that he and Lorenzo put Mrs. Hanks's body in a medium sized box, were driven somewhere in a Ford pick-up truck, dug a hole, and buried the box. Also, his description of the burial site before its clearance by Fred Blanton was consistent with that of other witnesses. He described a gravel road, off of which was a three-path-road surrounded by woods, which ran past the burial site.

Concerning his activities on August 31, 1972, the appellant gave a statement to the police in October of 1972 and testified at trial. It is undisputed that the appellant and his father left Atlanta on the morning of August 31, 1972 to return to Valdosta. They had been there since Tuesday, August 29, 1972 on a business trip. The crucial issues concerned his time of arrival in Valdosta and his activities once there.

In October of 1972, the appellant talked with GBI Agent Larry Oxford. He stated that while driving back to Valdosta on August 21, 1972, he and his father stopped around 1:00 p.m. to visit a couple of friends, Willard King and Howard Holt, in Cordele. He stated that they left Cordele and arrived at his father's home in Valdosta around 3:45 p.m. From there, they drove separate cars to the office and arrived there around 4:00 p.m. He stated that Hellen was not there when they arrived, although her car and purse were, and since he and his father could not find her, they called Mr. Hanks and the police around 5:00 p.m..

At trial, the appellant recounted basically the same story. He testified that on their return from Atlanta he and his father stopped in Cordele around 1:00 to visit his father-in-law, Willard King, stayed there approximately an hour, and then left for Valdosta. They got off of I-75 at their Valdosta exit around 4:00 p.m., give or take a few minutes. From there, he testified they went to the family home so he could pick up his car. They drove separate cars to the office, arriving between 4:15 p.m. and 4:30 p.m. He testified that Hellen was not there when they arrived and they looked for but were unable to locate her. As a result, he testified, he called Mr. Hanks about 4:45 p.m. to inquire about Hellen and called the police shortly thereafter. He testified that he did not notice if Hellen's purse was at the office and he denied looking through it, though he did state that either he or his father asked Mr. Hanks to look in her purse to see if her office keys were in it. He testified that Mr. Hanks found them and handed them to him. He denied making the statement that she wouldn't be needing the keys any more. The ap-

pellant's father testified to basically the same facts concerning the time of their arrival and the circumstances following it.

The appellant claimed that at the time of the initial search for Hellen by Mr. Hanks and the police, the entire office was available to be searched. Both the appellant and his father testified that Wilcox, Sr. was at the office during the search. The appellant testified that the search lasted until around 8:00 p.m. at which time he left the office, went home and washed up, and drove to a dinner honoring him and his wife, arriving there between 8:30 p.m. and 9:00 p.m. After the dinner, he testified that he first went back to the office to make sure the doors had been locked and then went home.

However, there was some testimony contradicting some of the above assertions. First, Mr. Hanks and the two police officers testified that the appellant's father was not at the office while they were there. Second, two police officers testified that the search ended about 6:30 p.m. In addition, there was testimony that only Mrs. Hanks's car, the appellant's car, a police car, and a truck were at the office on the afternoon of August 31, 1972, indicating that the appellant's father, who drove there in his own car, was not at the office.

The appellant's ex-wife and her father, Willard King contradicted the appellant's and his father's testimony concerning their time of arrival in Valdosta on August 31, 1972. The appellant's ex-wife testified that the appellant called her shortly after 5:00 p.m. on August 31, 1972. She testified that he told her that he and his father had arrived at the office between 3:00 p.m. and 3:30 p.m. and

had found the door open, but couldn't find Mrs. Hanks. Willard King testified that on August 31, 1972, the appellant and his father stopped in Cordele to visit him at approximately 1:00 p.m. and left about 1:30 p.m. The appellant's ex-wife testified that she and her husband had previously driven from Valdosta to Cordele several times in around 60 to 70 minutes. (The speed limit at that time was 70 miles per hour). Mr. King testified the drive should take about one and one-half hours.

On the evening of August 31, 1972, a party honoring the appellant and his ex-wife was scheduled. The appellant's ex-wife testified that when she talked to the appellant shortly after 5:00 p.m., he told her to go to the party without him, because he wasn't sure what time Mr. Hanks and the police would leave the office. Both the appellant's ex-wife and her mother testified that the appellant and his father did not arrive at the party until 9:00 p.m. There was testimony that the police left the Wilcox business premises at about 6:30 p.m. The appellant's ex-wife also testified that after the party ended at 10:30 p.m., the appellant, instead of going home with her, told her that he needed to go back to the office to make sure everything was locked. She testified that though he was in bed the next morning when she awoke, he had not come home before she went to sleep around 11:00 p.m. and did not wake her when he did come home. The appellant testified that he arrived home about thirty to forty minutes after leaving the party.

Several witnesses testified to strained relations between the appellant and Hellen Hanks. Dorothy Edwards, Hellen's best friend, testified that the Sunday before Hellen disappeared Hellen told her she was afraid of the

appellant and was looking for other employment. Dorothy testified that Hellen told her that she slapped the appellant one day because he grabbed her on the buttocks.

Another friend, Kara Ardengo, testified that the Tuesday before Hellen disappeared Hellen spoke with her and expressed fear of the appellant and a desire to get away from him by finding other employment. She testified that Hellen told her that she was keeping two sets of books, one that was good, and one that wasn't good, and that she didn't like to be in that position.

Jerry Davis, an employee of the Wilcox Outdoor Advertising at the time of Hellen's disappearance, testified that he saw the appellant and Hellen appear disturbed when they bumped into each other in a doorway. And another employee, John Goodman, testified that he saw the appellant place his hands on Hellen, who then pushed them away. He also said he heard appellant call Hellen a 'dumb bitch.'

Lucy Hanks, Hellen's daughter, also testified that Hellen wanted a new job because she did not like the appellant. Lucy testified that one day, several weeks before her mother's disappearance, her mother came home crying because she had slapped the appellant for making a pass at her.

The appellant denied that he had ever touched or patted Hellen and that she had ever slapped him. He testified that though he had been irritated with her on one occasion, she was a good employee with whom he never had any difficulty."

250 Ga. at 745-752.

Further facts will be developed as needed for a more thorough illumination of any issue presented on Petitioner's application for certiorari.

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PART THREE

REASONS FOR NOT GRANTING THE WRIT

I. PETITIONER'S ASSERTION OF A CONFLICT BETWEEN THE CIRCUITS, AND SOME STATE COURTS, IS GROUNDED ON PETITIONER'S REPRESENTATION TO THIS COURT THAT THE IN-COURT TESTIMONY OF ONE WITNESS AND AN OUT-OF-COURT STATEMENT OF A SECOND WITNESS USED SOLELY FOR IMPEACHMENT WERE COERCED; HOWEVER, BECAUSE THE DISTRICT COURT AND THE CIRCUIT COURT BOTH FOUND THIS PIVOTAL CONTENTION OF "COERCION" TO BE "MERITLESS," AND BECAUSE THIS COURT IS NOT A COURT FOR THE MERE CORRECTION OF ERRORS IN FACT FINDING, THIS APPLICATION FOR CERTIORARI SHOULD BE DENIED.

Petitioner contends that his application for a writ of certiorari should be granted because there allegedly exists a conflict between the circuit courts, and some state courts, regarding articulation of "the appropriate standard for reviewing a due process challenge to the admission of allegedly coerced witness testimony. . . ." (Petitioner's petition at 14). Determinative and pivotal to the viability of the issue as framed by Petitioner, so that any considera-

tion given it by this Court might be something other than merely advisory, is Petitioner's assertion that the in-court testimony of Mr. Wrentz and the out-of-court statement of Mr. Marshall, which statement was used solely for impeachment, were coerced.

In the federal habeas corpus petition Petitioner asserted that the aforementioned in-court testimony and out-of-court statement used for impeachment were coerced. After a full and fair evidentiary hearing, the district court found this claim to be without merit. *Wilcox v. Ford,* 626 F.Supp. 760, 785 (VII) (M.D. Ga. 1985). (Petitioner's Appendix at 92(a)). On cross-appeal to the circuit court, Petitioner asserted that the district court erred in the above determination. After briefing and oral argument the circuit court agreed with the district court's finding that the Petitioner's assertion of "coercion" was "meritless." *Wilcox v. Ford,* 813 F.2d 1140, 1148 (11th Cir. 1987). (Petitioner's Appendix 20(a)). Notwithstanding the lack of a very obvious and exceptional demonstration by Petitioner of errors committed by both the district and circuit court in fact finding and evidentiary development, Petitioner would have this Court either totally disregard the lower courts' determination of the lack of merit of the "coercion" issue, grant certiorari and render an advisory opinion, or alternatively grant certiorari, abandon its role as a court of law and entangle itself in the mire of correction of alleged errors in findings of fact made by two courts below. This Court should do neither.

If this Court declines Petitioner's invitation to cavalierly disregard the lower courts' decisions adverse to him directly on the pivotal issue of "coercion," as well it should,

then this Court should deny this application for certiorari for the question as presented by Petitioner would then request nothing more than an advisory opinion of this Court.

Alternatively, certiorari should also be denied because this Court is not one for the mere correction of alleged errors in fact finding. In *United States v. Johnson*, 268 U.S. 20 (1925), the Court noted that "we do not grant a certiorari to review evidence and discuss specific facts." *Id.* at 227. In *Graver Mfg. Co. v. Linde Co.*, 336 U.S. 271 (1949), the Court, in describing its function, stated the following:

> A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error. (cites omitted).

Id. at 275.

While Petitioner contends that certiorari should be granted to determine "the appropriate standard for reviewing a due process challenge to the admission of allegedly coerced witness testimony . . . " (Petitioner's petition at 14), both lower federal courts have specifically determined that there was no use of "coerced witness testimony" at Petitioner's trial. To grant certiorari on this record would necessarily require this Court to review evidence, discuss specific facts and function not as a court of law but rather as a court for the mere correction of alleged errors in fact finding. Such a grant of certiorari, Respondent offers, would be demonstrably inconsistent with the principles that inform this Court's exercise of certiorari jurisdiction.

II. PETITIONER'S ASSERTION OF A CONFLICT IN PRINCIPLE BETWEEN THE CIRCUIT COURT BELOW AND OTHER FEDERAL CIRCUIT AND STATE COURTS IS MERELY ILLUSORY.

Petitioner next contends certiorari should be granted as there allegedly exists conflict between the cases regarding "the proper remedy for introduction of a non-defendant's coerced statement or testimony." (Petitioner's petition at 16). As previously noted, the lynchpin of Petitioner's asserted basis for granting the requested writ is Petitioner's contention that the in-court testimony of a witness and the out-of-court statement of another, which was used solely for impeachment, were coerced. Both lower federal courts found to be without merit Petitioner's contention that the testimony of Mr. Wrentz and the out-of-court statement of Mr. Marshall were coerced.

Mr. Marshall was merely impeached at trial with his prior inconsistent out-of-court statement. The statement was not placed in evidence. With reference to Mr. Wrentz's in-court testimony, the circuit court, agreeing with the district court, found that, "There is no proof that Wrentz was incompetent to testify or that his in-court testimony was coerced. (Cites omitted). Furthermore, given that Wrentz's direct testimony was corroborated in various aspects by other evidence, it does not even appear that Wrentz's direct testimony is necessarily unreliable." 813 F.2d at 1149.

In dicta, the circuit court addressed the proper standard for reviewing a trial court record containing, "improperly obtained statements which results in a fundamentally unfair trial." 813 F.2d at 1148. After stating

the clear basis for its decision, i.e., "the admission of Wrentz's direct testimony and Marshall's prior statement was not improper and did not result in a fundamentally unfair trial," the circuit court began its dicta with the hallmark phrases "Even assuming that the police employed improper interrogation techniques to obtain Marshall's and Wrentz's out-of-court statements . . .," "Even assuming, however, that the reliability of Wrentz's direct testimony and Wrentz's out-of-court statements was somewhat suspect . . ." 813 F.2d at 1149. Under such circumstances the circuit court, in dicta, noted the appropriateness of a review based upon the totality of the circumstances while testing for fundamental fairness when evaluating the use at trial of allegedly improperly obtained statements of witnesses. Petitioner, on the other hand, contends that a *Jackson v. Denno*, 378 U.S. 368 (1964), voluntariness standard is more appropriate.

It is this dicta of the circuit court that the Petitioner contends constitutes a conflict in principle with other cases and provides a basis for the grant of certiorari. As readily revealed by an examination of the circuit court's opinion, however, the dicta cited and relied upon by Petitioner presents no true and intolerable conflict in the application of the rules of law. Because that portion of the circuit court's opinion relied upon by Petitioner as a basis for the requested writ is mere dicta and does not constitute the basis for the circuit court's decision and because at best the subject dicta might arguably present a conflict of principle as opposed to an intolerable conflict in the applications of rules of law, this application for certiorari should be denied.

III. PETITIONER'S MERE DISAGREEMENT WITH THE CIRCUIT COURT'S RESOLUTION OF THE POLICE INVESTIGATIVE MISCONDUCT ISSUE AND THE SUFFICIENCY OF THE EVIDENCE CLAIM PRESENTS NO QUESTION FOR REVIEW ON CERTIORARI.

Finally, Petitioner merely contends that the circuit court erroneously concluded that the investigative conduct of the police did not shock the conscience and that the evidence presented at trial was insufficient for any rational trier of fact to find proof of guilt beyond a reasonable doubt. As previously noted, this Court does "not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnson,* 268 U.S. at 227. "A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error. (Cites omitted)." *Graver MFG. Co. v. Linde Co.,* 336 U.S. at 275.

Petitioner, aside from his disagreement with the conclusions reached by the circuit court, has demonstrated no "very obvious and exceptional showing of error" regarding the circuit court's treatment and disposition of the police investigative misconduct issue or the sufficiency of the evidence issue such as would warrant this Court's exercise of its certiorari jurisdiction. Accordingly, certiorari should not be granted.

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CONCLUSION

This Court should refuse to grant a writ of certiorari to the Eleventh Circuit Court of Appeals as it is manifest that no substantial federal question not previously decided by this Court is presented, and the decision sought to be reviewed is demonstrably in accord with the applicable decisions of this Court.

Respectfully submitted,

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